IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9151 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYANTILAL H THUMMAR

Versus

EXECUTIVE ENGINEER

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Appearance:

1. Special Civil Application No. 9151 of 1993

MR PV HATHI for Petitioner

MR HRIDAY BUCH for ND NANAVATI for Respondents

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 23/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner [hereinafter referred to as, "the workman"] challenges the judgment and order dated 30th June, 1993 passed by the learned Labour Judge, Rajkot in Reference [LCR] No. 1226 of 1983.

By order dated 22nd September, 1980 made by the Executive Engineer, Irrigation Department, District Panchayat, Rajkot, the petitioner and six others were appointed as Tracer on temporary basis. The said appointment was made pursuant to selection made by the District Panchayat Service Selection Committee, Rajkot. The service of the workman was terminated on 30th September, 1983. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Rajkot and was registered as above. The said reference was contested by the respondent-Executive Engineer, District Panchayat, Rajkot [hereinafter referred to as, "the Panchayat"]. The Labour Court held that the workman was retrenched from service. The said retrenchment was in consonance with Section 25-F of the Industrial Disputes Act, 1947 [hereinafter referred to as, "the Act"]. The Court, therefore, rejected the claim made by the workman. Feeling aggrieved, the workman has preferred the present petition.

Learned advocate Mr. Hathi has submitted that the workman was selected by the District Panchayat Service Selection Committee after following due procedure. Shri M.S Jani appointed as Tracer alongwith the workman was continued in service of the Panchayat and has now been, by order dated 19th June, 1998, absorbed as work-charge Clerk. Hence, the retrenchment of the workman was not legal and proper. He has submitted that pending the reference, the workman was appointed for short periods on scarcity relief work. The Labour Court has misconstrued the order of appointment of the petitioner dated 22nd September, 1980 and has held that the workman was appointed on scarcity relief work. Mr. Hathi has emphatically submitted that the aforesaid order dated 22nd September, 1980 does not indicate that the workman was appointed on scarcity relief work. The Labour Court has thus proceeded on erroneous assumption that the appointment of the workman was for scarcity work. The Labour Court has, therefore, wrongly relied upon the judgment of this Court in the matter of J.J Shrimali v. District Development Officer, Mehsana & Ors. [1989 (1) GLR 396]. In the event, the service of the workman was not required, the workman had a right to be absorbed in the other equivalent cadre under the Panchayat. In support thereof, the workman had produced

the Government Circulars dated 7th December, 1970 and 9th October, 1975. The said circulars have not been considered by the Labour Court. On the contrary, it has been observed that the workman did not produce any evidence in support of his claim for right to absorption in other equivalent cadres. In the submission of Mr. Hathi the matter requires consideration afresh by the Labour Court.

The petition is contested by the learned advocate Mr. Buch. He has supported the impugned judgment and award of the Labour Court. He has submitted that pursuant to the selection made by the District Panchayat Service Selection Committee, Rajkot, by order dated 22nd September, 1980, the petitioner and six others were appointed as Tracer on temporary basis. The workman was retrenched by order dated 12th May, 1983 {Exh. 20}. The said order indicates that there was no requirement for Tracer; that the workman's service as a Tracer was, therefore, terminated and the workman was ordered to be paid retrenchment compensation and notice-pay as required under the law. By evidence on record, it has been proved that amongst the Tracers, the workman was junior most and alongwith him five other Tracers were also retrenched. Since his retrenchment, no other appointment of Tracer was made in the R & B Department. Considering the said evidence, the Labour Court has, in my view, rightly held that the workman was retrenched from service in accordance with Section 25-F of the Act. As to the right of the workman to be absorbed in the equivalent cadre in Panchayat, the witness of the Panchayat has stated that the cadres equivalent to the post of Tracer were Clerks, Talati-cum-Mantry, Gram Sevak, etc. That the recruitment and appointment to the said cadres were made in accordance with the relevant rules and each cadre was governed by separate set of rules. The Government circulars dated 7th December, 1970 [Exh. 26] came to be issued pursuant to reduction in the establishment of Gram Sevak made by order dated 8th November, 1968 with a view to accommodating surplus Gram Sevaks. It was decided that such surplus Gram Sevaks be absorbed in the cadres of Talati-cum-Mantry, Clerks, etc. By the said Circular, the State Government clarified that after such absorption, such Gram Sevaks were not required to undergo the recruitment procedure for appointment as Talati-cum-Mantry or Clerk but were required to pass departmental examination. With respect to the Tracers' retrenchment on account of economy measures, it was clarified that such Tracers, if eligible may be absorbed in the cadre of Clerk. The Government circular dated 9th October, 1975 [Exh.27] contains general instructions with

respect to selection and recruitment to Panchayat service. The said circular also provides that the employees regularly selected, if are retrenched on account of economic measures and if have served continuously for two years, they be absorbed in the post of Gram Sevak, Agriculture Assistant, Primary Teacher, Talati-cum-Mantry keeping in view their educational qualification and experience. Both the said circulars refer to the employees who were rendered surplus on account of economic measure/reduction in establishment. The said circular empowers the Panchayat to absorb such surplus employees by relaxing the relevant recruitment rules; if necessary. The workman was not discharged from service as a result of economic measure. The said circulars, therefore, shall not apply. Even otherwise, the said circulars enabled the Panchayats to absorb such surplus employees but the same did not create an enforceable right to absorption. The workman's claim for absorption in any other service of the Panchayat is not tenable.

The Labour Court has considered the evidence on record and has recorded a categorical finding that by Order dated 25th September, 1980 [Exh.17], the aforesaid appointment order dated 22nd September, 1980 came to be cancelled. By later order dated 29th September, 1980 [Exh.18], the workman came to be appointed on scarcity relief work on the post temporarily sanctioned by the State Government. Hence, the contention that the Labour Court has erred in holding that the workman was appointed on scarcity relief work is not correct. By order dated 29th September, 1980 [Exh.18], the workman and five others were indeed appointed as Tracer in scarcity relief work. The workman in his evidence did admit that alongwith him four other Tracers were also retrenched. It is also admitted that the workman was offered retrenchment compensation and pay in lieu of notice. The workman refused to accept the said payment.

In view of the above discussion, the finding of the Labour Court that the workman was retrenched in consonance with Section 25-F of the Act is correct. The same does not warrant interference.

As to the continuance of the above referred Mr. M.S Jani, it appears that the said Shri Jani was also retrenched from service as Tracer. In compliance with Section 25-H of the Act, the said Shri Jani, the petitioner and others were recalled by order dated 21st November, 1985 and were temporarily appointed as Workcharge Tracer. Once again, by order dated 18th March, 1986, the workman, the above referred Shri Jani

and three others [retrenched Tracers] were recalled and were given appointment as Cashier on temporary posts created for scarcity relief work. Hence, there is no substance in the contention that the requirement under Section 25-H of the Act has not been complied with. The contention that the above referred Shri Jani was continued in service after the retrenchment of the workman is also not correct. On perusal of the order dated 19th June, 1998, it appears that the said Shri Jani was appointed as daily wage employee on 16th March, 1986. By order dated 19th June, 1998, some 16 daily wage employees, including the above referred Shri Jani were absorbed as workcharge Clerks. Thus, it cannot be said that the said Shri M.S Jani was continued as Tracer. Moreover, it is not the case of the workman that he was senior to the said Shri M.S Jani. The evidence on record reveals that amongst the Tracers, the workman was the junior most. Therefore also, the workman cannot have a legitimate grievance against his retrenchment nor can he claim prior right to employment over the said Shri M.S Jani.

No case for interference is made out. In view of the above discussion, the impugned judgement and award do not warrant interference. The petition is dismissed with costs. Rule is discharged.

{Miss R.M Doshit, J.}